

Title 18, Public Revenue

Sales and Use Tax Regulation 1705, Relief From Liability

FINAL STATEMENT OF REASONS

Overview/Non-Controlling Summary

Update

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

Specific Purpose

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code section 7261. This regulation is necessary to provide guidance to taxpayers affected by this statute.

Factual Basis

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, Relief from Liability, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice. Proposed regulatory changes to sales and use tax regulation 1705, will explain that similar relief applies to franchisees and franchisors. Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

Local Mandate Determination

The Board has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to

local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

Response to Public Comment

On December 17, 2008, the Board held a public hearing on the proposed amendments to Sales and Use Tax Regulation 1705. Public comment was received at the hearing from Lindsay Craine, representing Color Me Mine. Ms Craine spoke in favor of the proposed amendments.

Small Business Impact

The State Board of Equalization has determined that the adoption of the amendments to Regulation 1705 will have no significant statewide adverse economic impact directly affecting small business. The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. The amendments to the regulation as proposed will not be detrimental to California business in competing with businesses in other states. The proposed regulations may affect small business.

Cost Impact on Private Person or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs

No significant effect.

Federal Regulations

Regulation 1705 and the proposed changes have no comparable federal regulations.

Alternatives Considered

By its motion, the Board determined no alternative to promulgating the regulations would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the adopted regulations.

Authority

Section 7051, Revenue and Taxation Code

Reference

Reference: Section 6596, Revenue and Taxation Code